

**BERNALILLO COUNTY
BOARD OF COUNTY COMMISSIONERS**



**RULES OF PROCEDURE FOR
QUASI-JUDICIAL HEARINGS
AND REGULAR ZONING MEETINGS**

April 22 2014

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1. Applicability of Rules. These rules shall apply to all quasi-judicial proceedings of the Commission. Quasi-judicial proceedings include all actions of the Commission that determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding, including but not limited to Regular Zoning meetings. Quasi-judicial proceedings do not include legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans, zoning regulations, other land use planning documents, or the adoption of area-wide maintenance maps or amendments. Legislative acts relating to land use matters may be heard at a Regular Administrative meeting, or if necessary, at a Regular Zoning meeting.

2. Commission Meetings – Regular Zoning. Regular Zoning meetings of the Commission shall be scheduled at a separate meeting at the discretion of the Board in the Albuquerque Bernalillo County Government Center, One Civic Plaza NW, Vincent E. Griego Chambers, Level B, unless advance notice of a change in this schedule is provided to the public. Prior notice of such change shall be provided to the public and the media in accordance with the then current Open Meetings Resolution. This meeting schedule may be adjusted by the Commission to accommodate holidays, County closures, and other special circumstances as determined by the Commission. The Commission shall follow all statutory requirements in conducting meetings. All persons with disabilities shall be provided assistance necessary to enable them to effectively participate in Commission meetings.

3. Quorum. A quorum for the transaction of business by the Commission consists of a majority of all directors, which, for a five (5) member commission, is equal to three (3) Commissioners. Once a quorum has been established, a majority of Commissioners present at the meeting shall be required to carry a motion, unless by statute, ordinance or other regulation, an extraordinary majority of the Commission is required.

4. Ex Parte Communications. A person who is prohibited by statute, ordinance, rule or regulation may not discuss with any Commissioner the merits of any quasi-judicial matter on which the Commission may take action. All such discussions and communications are considered ex parte communications. County staff shall take precautions to assist Commissioners in avoiding ex parte communications, such as screening phone calls and written communications to Commissioners, and sending notices of pending matters to the Commission. In the event an ex-parte communication occurs, the following procedures shall be followed in order to remove the presumption of prejudice:

- A. The substance of any ex-parte communication with a Commissioner which relates to a quasi-judicial action pending before the Commission (such as a zoning decision) is not presumed prejudicial to the action if the subject of the communication and the identity of the person, group or entity with whom the communication took place is disclosed and made a part of the record before the final action on the matter.
- B. A Commissioner may read a written communication from any person into the record during the hearing on that matter. A written communication that relates to quasi-judicial action pending before the Commission (such as a zoning decision) shall not be presumed prejudicial to the action. Such written communication shall be made a part of the record before final action on the matter.

Nothing herein shall prohibit any Commissioner from questioning the parties of record concerning matters in the record during the quasi-judicial proceedings.

5. **Conflict of Interest.** In addition to any requirements set forth in the County's Code of Conduct, any Commissioner who has a substantial financial interest or whose spouse or any dependent has a substantial financial interest in any matter pending before the Commission shall disclose such interest and shall disqualify herself himself from participating in any debate, decision or vote relating thereto. In the event other facts are known to the Commissioner which may create a conflict of interest or otherwise require disqualification of said Commissioner from participating in any action on the matter, the Commissioner shall disclose such potential conflict of interest and shall determine whether disqualification is necessary. Alternatively, the Commissioner may submit the issue to the Commission for its determination of whether disqualification is necessary under the circumstances. The decision of the Commission shall be final.

6. **Disqualification.** Any person or party seeking to disqualify a Commissioner from participating in a decision of the Commission based on an appearance of impropriety, including alleged ex parte communications or a conflict of interest, must raise the challenge as soon as the basis for disqualification is made known to the person or party. Where the basis is known or reasonably should have been known prior to the issuance of a decision and is not raised prior to the issuance of the decision, it may not be relied on to invalidate the decision.

7. **Required Attendance of Officials and Staff.** In addition to Commissioners, County officials whose regular attendance shall be required at meetings of the Commission are the County Clerk, County Manager, County Attorney, or their designees. Any Commissioner leaving a Commission meeting early, except in the event of an unexpected illness or emergency shall make the Chair aware of such departure as early as possible. No Commissioner or County official whose attendance is required shall be permitted to appear or participate by telephone or other electronic media at any quasi-judicial proceedings, including Regular Zoning Meetings. All individuals who wish to participate in a quasi-judicial proceeding, including Regular Zoning Meetings, must be personally present.

8. Clerk of the Commission. The County Clerk serves as the official Clerk for the Commission in accordance with Section 4-40-3 and 4-40-4 NMSA 1978, as amended. The County Clerk shall keep minutes of every Commission meeting, and the minutes shall be maintained by the County Clerk and shall be available for inspection during regular County business hours.

9. Disturbing Meetings. No person shall disturb or behave in a disorderly manner at any meeting of the Commission. All individuals attending the meetings shall be seated during the course of the meeting, unless an ADA accommodation requires that a person stand at particular intervals. In these cases, the individuals shall stand in the back of the Chambers. Cell phones shall be turned off or silenced during the meetings. Any person in violation of these Rules will be asked to leave or will be escorted out of the Chambers by a lawful custodian of the building.

10. Sergeant-at-Arms. The County Manager, or her his designee, shall be Sergeant-at-Arms of the Commission meetings. The Bernalillo County Sheriff's Office and City of Albuquerque Security Staff are authorized to assist the County Manager in performing this duty. The County Manager shall carry out all orders and instructions given by the County Commission for the purpose of maintaining order and decorum at the Commission meeting. The following policy will provide guidance in handling disruptions:

- A. If an individual refuses to relinquish the podium after being allowed to address the Commission, the Chair will inform the individual that their time to address the Commission has expired and the Chair will direct the individual to leave the podium.
- B. If an individual causes disruption in the Commission meeting site, the Chair will inform the individual causing the disruption to cease the disruptive activity.
- C. If the individual fails to leave the podium or the disruption continues:
 - (1) The Chair may (i) inform the individual causing the disruption that their actions are contrary to the orderly function of the meeting and that the individual is to cease such action or the Sergeant-at-Arms will be instructed to remove the individual from the meeting site; and/or direct the individual to leave the meeting site. The Chair will inform the individual that, if s/he is directed to leave and fails to do so, the individual will be subject to arrest for trespass.
 - (2) If the disruption fails to cease, the Chair shall be authorized to take final action, including having the individual removed from the meeting site. In taking final action, the Chair shall read the following aloud to the individual: "As the Commission Chair, I inform you that your actions are inconsistent with the orderly function of this meeting and you have failed to comply with the lawful order of the Chair. I am instructing the Sergeant-at-Arms to have you removed from this meeting site, and if deemed necessary by the Sergeant-at-Arms, to remove you from this building."

11. **Agenda Preparation.** Agenda items for Regular Zoning meetings may be introduced by the County Manager or designee provided that the agenda item is submitted to the Commission Administrator 96 hours prior to a Regular Zoning meeting along with the applicable County Planning Commission (CPC) or Board of Adjustment (BA) recommendation and necessary documentation.

12. **Agenda Material.** A copy of the agenda and supporting materials shall be prepared for Commissioners and made available to them a minimum of 96 hours prior to the Regular Zoning meeting. The information shall be made available to the public and the media in accordance with the Commissions Open Meetings Resolution. The agenda, as well as supporting documents that are part of agenda documentation, shall be available for review in the County Manager's Office. Late submission of material may be allowed on the vote of the Board of County Commissioners if it determines that the material is not new evidence and it is necessary to make an informed decision on the matter and does not unduly prejudice the opposing party.

13. **Meeting Order of Business.** For Regular Zoning Meetings and Quasi-Judicial Hearings, the Commission may consider business in the following order, provided however, that the Chair may rearrange items on the agenda to more expeditiously conduct the business of the Commission. Reasonable efforts shall be made to hear legislative zoning matters at Regular Administrative meetings, but they may also be added to Regular Zoning meetings:

- A. Call to Order.
- B. Announcement of Additions and Changes to the Agenda.
- C. Approval of Minutes.
- D. Consent Agenda.
- E. Public Hearings, which shall be conducted utilizing the procedures identified in Rule 19.
- F. Appeals.
- G. Announcement of Commission Meetings.
- H. Signing of Official Documents.
- I. Adjournment.

14. **Presentation of Consent Agenda.** A Consent Agenda may be used for zoning items. Items that have been recommended for approval by both staff and CPC, and which have received no opposition from the public prior to the meeting, and where no appeal has been filed, may be scheduled on the Consent Agenda. The Commission will consider the Consent Agenda at the beginning of the meeting. The Commission may take final action on all items on the Consent Agenda at one time by calling for a single vote for all items.

15. **Removal from Consent Agenda.** The Commission may, by majority vote of the quorum, “designate an item for review” and remove it from the Consent Agenda (Section 25D(1) of the Bernalillo County Zoning Ordinance, Ordinance No. 213). The Commissioner initiating the request for removing an item shall state the reason for the request. When an item is removed from the Consent Agenda, it shall be re-advertised and placed on the Public Hearing Agenda of the next Regular Zoning meeting or other meeting of the Commission as determined by the Commission.

16. **Deferrals.** At the discretion of the Commission a Zoning Agenda item may be deferred by postponing it to a time certain. The date, time and place shall be identified for the deferred item.

17. **Withdrawal of Applications or Appeals.** Any land use application or an appeal of a land use recommendation acted on by the CPC or BA may be withdrawn by the property owner agent or by the appellant at any time prior to the item being addressed by the Commission. The withdrawal should be requested either in person or in writing “on the record.” A failure of a party to pursue an application may be deemed a withdrawal by the Board, and thereafter dismissed.

18. **Multiple Item Appeals.** The Commission may combine separate appeals of the same action in the interest of quasi-judicial economy and to eliminate the need for duplicative testimony and staff presentation. The time limits for multiple item appeals shall be set in a manner that is consistent with Rule 22.A.

19. **Public Hearings – Procedures.** The procedures to be followed for public hearings on legislative matters are, generally, as follows:

- A. The County Manager or designee should describe the agenda item to be considered, and state the staff recommendations for the item. The Chair should then inquire as to whether any Commissioners have questions for County staff.
- B. Following presentation by County staff, the Chair shall accept public comment on the agenda item.
- C. Following public comment (if any), the Chair shall close the public hearing and inquire as to whether any Commissioner wishes to make a motion on the item. If a motion is made, which is seconded, discussion on the item occurs among the Commissioners.
- D. Before closing discussion on the item, the Chair inquires as to whether there is any further discussion by the Commissioners and or any final comments or recommendations from County staff.

- E. The Chair then inquires as to whether the Commissioners are ready to call the question. If the Commissioners are ready to call the question, the Chair ends discussion on the item and calls for the vote.

20. Motions.

- A. No motion shall be entertained or debated until announced by the Chair, and every motion must be seconded in order to be considered for action. If a motion is not seconded, the motion dies. When a question is before the Commission, only the following additional motion(s) shall be entertained and such motion(s) shall have precedence in the following order:

- (1) To adjourn
- (2) To recess
- (3) To reconsider
- (4) To table
- (5) To move the previous question
- (6) To postpone to a time certain (to defer)
- (7) To amend or substitute
- (8) To postpone indefinitely
- (9) Any other motion

- B. A motion to adjourn, to recess, to table, or move the previous question shall be decided without debate and cannot be amended.
- C. A motion to move the previous question must be approved by a majority of those present and voting, and may apply to only the immediate pending question.
- D. All other motions are debatable.
- E. A motion to amend or substitute shall be clearly stated.
- F. A motion to adjourn when no fixed time is set shall mean an adjournment to the next Regular Administrative or Regular Zoning meeting (as applicable) of the Commission.
- G. A motion to postpone to a certain time (to defer) may be made for a period not to exceed three (3) months.

21. Rules of Order and Debate.

- A. The Commissioner making the motion shall be entitled to the floor first for debate. After the maker of the motion has had the opportunity to speak first if he so wishes, the Chair shall recognize any other Commissioner wishing to speak on the matter for the purpose of debate.
- B. Once recognized, a Commissioner should not be interrupted when speaking except to call said Commissioner to order by the Chair or upon a point of order made by any Commissioner. If a call to order is made, the Commissioner must cease speaking

until the question of order is determined, without debate, by the Chair. If it is determined by the Chair that the Commissioner is in order, the Commissioner shall be at liberty to continue speaking as first recognized.

- C. Commissioners shall confine their remarks to the question under discussion or debate, avoiding discussions pertaining to personal matters or conflicts in personalities. No Commissioner shall engage in private discourse or commit any other act tending to distract the attention of the Commission from the business before it.

22. Procedure for Quasi-Judicial Hearings. The procedures to be followed for appeals are generally follows: [VRC1]

- A. **Appeal or Public Hearing Time Limits:** A fifteen (15) minute time limit on each party's argument before the Commission may be established with the understanding that the Chair may alter the time limit when the case is unusually complex. Where numerous speakers sign up to present argument, the Chair may assign a time limit of two (2) minutes per speaker, but in any event, each party's argument shall not exceed the total time allowed. In all cases, the maximum time available for proponents should be equal to the maximum time allowed for the opponents. If necessary, a staff person shall be assigned by the County Manager to be the official timekeeper.
- B. In order to focus the Board of County Commissioners on the issues the party is presenting on appeal, they are encouraged to cite to the facts in the record from the County Planning Commission, and present legal arguments based on the facts in the record. No new evidence shall be presented on appeal to the Board of County Commissioners except as provided in paragraph 22.J below.
- C. The County Manager or designee shall describe the quasi-judicial item to be considered and make a presentation pertaining to the item. This presentation shall be limited to five (5) minutes. The Chair shall then inquire as to whether any Commissioner has questions for the staff members who made the presentation.
- D. The zoning applicant, or appellant, or his her representative will [VRC1] make a presentation pertaining to the application or appeal. This presentation shall be limited to ten (10) minutes. The Chair will once again inquire as to whether Commissioners have questions of the applicant/appellant and the applicant's appellant's representatives.
- E. The opponents will make a presentation pertaining to the application or appeal. The presentation will be limited to fifteen (15) minutes. The Chair will once again inquire as to whether Commissioners have questions of the opponents or the opponent's representatives.
- F. There will be an opportunity for applicant/appellant rebuttal and summation. This presentation shall be limited to five (5) minutes.
- G. Staff will then be provided an opportunity to present closing comments. There shall be a time limit of two (2) minutes for closing comments.

- H. The Chair will then inquire of the Commissioners as to whether they have further questions of staff, the applicant appellant or the opponents and will recognize Commissioners who wish to question the parties or staff.
- I. The Chair will then inquire of the Commissioners as to whether they are prepared to vote on the issue of the application/appeal before them.
- J. No new evidence shall be presented by the applicant appellant or the opponents. If a party shows good cause why new evidence is necessary for the Commission to act on the case and why the evidence was not available to be presented to the County Planning Commission, the Board of County Commissioners shall either:
 - i. Remand the case to the County Planning Commission to hear the new evidence and any rebuttal evidence, or;
 - ii. If the proposed new evidence is brief and concise in nature and will not prejudice the other party's opportunity to respond to it the Commission may allow the evidence to be presented and considered; swear any witness; allow the opposing party to rebut the new evidence, and; allow for brief cross examination on the new evidence presented through the Chair.
- K. The Commission shall then take action on the item.

23. Action of the Commission. The Commission shall take action on a quasi-judicial proceeding by means of a vote. The Commission shall base its decision solely on the evidence in the record. No public comments addressing the merits of a quasi-judicial action are permitted at any Commission meeting. If public comment does occur, the substance of the comment may not be considered by the Commission in making its decision. The Commission may decide to approve, approve with conditions, modify, remand or deny the quasi-judicial action.[VRC1] The Commission shall adopt written findings of fact and conclusions of law to support its decision.[VRC2]. The Commission's decision shall be final and conclusive; subject to appeal to State District Court as provided by law.

Before each quasi-judicial hearing the following statement shall be read by the Chair:

- A. This is a quasi-judicial proceeding;
- B. The Commission is to act as judges of the particular facts concerning the parties before it, applying existing law to the facts;
- C. The Commission is to base its decision only on the facts presented by the parties contained in the record from the County Planning Commission, and not on any facts supposed by it that may exist outside the proceedings;
- D. The Commission is to act with impartiality toward each party, applying the law to the facts without favoritism or bias, or the mere desirability of a given result;
- E. A Commissioner with a financial or family interest in the outcome of a quasi-judicial proceeding should disclose any potential conflict in accordance with these Rules, and should if necessary recuse himself from the proceedings;
- F. The Commission in rendering its decision should make a clear statement of what it believes to be the relevant facts and why those facts led it to its decision;
- G. Each Commissioner shall avoid ex-parte communications with parties bringing cases before the Commission; however, such communications that occur may be cured by the procedures stated in Rule No. 4.

24. **Voting.** The votes during all Commission meetings should be transacted as follows:
- A. Every member present and eligible to vote must give his/her vote, unless the member has publicly stated that s/he is abstaining from voting due to a conflict of interest. If any Commissioner declines to vote "aye" or "nay" by voice, his or her vote shall be counted as an "aye" vote.
 - B. The passage of any motion shall require the affirmative vote of at least a majority of the membership of the Commissioners who are present and eligible to vote. If a motion is not carried by at least a majority, the proposal shall be considered lost. In case of a tie in votes on any proposal, the proposal shall be considered lost.
 - C. Any matter requiring a super-majority of the Commission's quorum must specifically state the requirement in the written rules governing the matter, or a simple majority shall be presumed.
 - D. A Commissioner shall be allowed to change his her vote, but only before the result of the Commission's vote has been announced.
 - E. A record of each Commissioner's vote on all items acted on during the meeting shall be entered in the minutes of each meeting.

25. **Personal Privilege and Parliamentary Inquiry.** Any Commissioner may, as a matter of personal privilege, speak for not more than five (5) minutes upon matters which may affect the Commission, its rights, its dignity and the integrity of the proceedings. The Chair shall recognize any Commissioner making a parliamentary inquiry.

26. **Standard of Review.** In all quasi-judicial proceedings, the Commission must apply the applicable law and, except as specified by law, be supported by substantial evidence in the record.

27. **Reconsideration of Action Previously Taken.** A motion to reconsider enables the Commission to set aside a vote taken at the same meeting, and to consider that motion again as though no vote had been taken on it.

- A. A motion to reconsider shall be allowed at any time by a Commissioner who is recorded as having voted with the prevailing side, except when a motion on some other subject is pending.
- B. A motion to reconsider shall require the affirmative vote of the Commission's quorum, or the motion shall fail and the vote may not be set aside.

28. **Corrected Actions.** Any official action taken by the Board while in session that is later found to be in error, either substantive or clerical in nature, shall be corrected at the earliest possible time and returned to the Commission for official action.

29. Appeal of Decisions of the Chair. During a convened meeting of the Commission, an appeal to the Board may be made from any decision of the Chair. In making an appeal to the Board, the Commissioner appealing shall state her his reasons thereof, to which the Chair may respond. Such appeals shall be immediately acted upon by the Board and no motion, other than a motion to adjourn, shall be entertained until the question has been decided. A vote of the majority of the Commission's quorum shall be required to sustain an appeal.

30. Commission Chair. The Chair presides at all meetings of the Commission. In addition to the powers conferred upon her/him as Chair, s he continues to have all the rights, privileges and immunities of a member of the Commission. The Chair's authority is established by state statutes and these rules. The Chair shall have no authority to act on behalf of the Commission or the County or to set policy or operational practices or procedures unless specifically provided by these rules or state statute. With respect to meetings of the Commission the Chair's responsibilities are as follows:

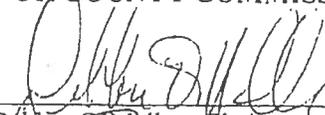
- A. Call the meeting to order, having ascertained that a quorum is present;
- B. Preserve order and call to order any member of the Commission who violates any of these procedures; and, when presiding, decide questions of order, subject to a majority vote on a motion to appeal;
- C. Speak to points of order in preference to other Commissioners;
- D. Speak, as may other Commissioners, on general questions from the chair;
- E. Vote upon all questions in the same manner as other Commissioners;
- F. Announce the result promptly upon completion of every vote;
- G. Sign, along with all members of the Board, official actions passed by the Commission, as required.
- H. Sign decision letters arising from decisions made by the Commission regarding land use matters, during Zoning Meetings, or during other properly noticed meetings of the Commission.
- I. Declare the meeting adjourned when the Commission so votes, or at any time in the event of an emergency affecting the safety of those present;
- J. Assign each Commissioner's seat in the commission chambers.

31. Other Matters Not Covered by These Rules. Any matter not covered by these rules shall be governed by Robert's Rules of Order (latest edition), or, if not covered by Robert's Rules of Order, by a decision of the Chair, subject to the Right of Appeal (see Rule 31, Appeal).

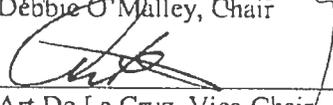
32. Amendment of Rules. These rules, or any part thereof, may be amended, repealed, altered or rescinded by a majority vote of all Commissioners after two week's notice of the intent to amend. Such notice shall be presented in writing at a Regular Administrative meeting of the Commission.

ADOPTED, in County of Bernalillo, New Mexico, this 22nd day of April, 2014.

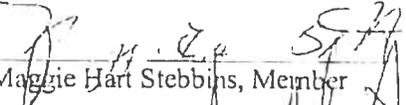
BOARD OF COUNTY COMMISSIONERS



Debbie O'Malley, Chair



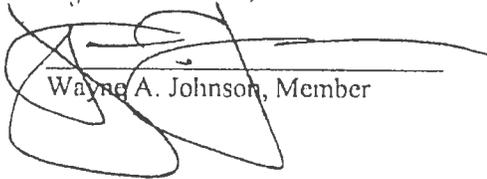
Art De La Cruz, Vice-Chair



Maggie Hart Stebbins, Member



Lonnie C. Talbert, Member

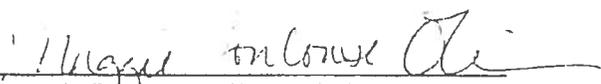


Wayne A. Johnson, Member

APPROVED: 

County Attorney

Date: 4/22/14

ATTEST:


Maggie Toulouse Oliver, Clerk

Date: 4/22/14

